

September 9, 2014

VIA ECF AND HAND DELIVERY

The Honorable Robert E. Gerber
United States Bankruptcy Court, Southern District of New York
One Bowling Green
New York, New York 10004

Re: *In re: Motors Liquidation Company, et al., f/k/a General Motors Corp., et al.*,
No. 09-50026 (REG) (Bankr. S.D.N.Y.)

Dear Judge Gerber:

On behalf of Wilmington Trust Company (“WTC”), as trustee for and administrator of the Motors Liquidation Company General Unsecured Trust (the “GUC Trust”), we respectfully submit this letter to object to New GM’s Notice of Presentment seeking entry of a Proposed Order authorizing it to file a 20-page “reply” to WTC’s August 19, 2014 submission in response to Roger Dean Gillispie’s motion for leave to pursue claims against General Motors, LLC, or, alternatively, to file a post-bar-date proof of claim. As explained herein, New GM’s request for leave to file significant additional briefing more than three weeks after the 24-page brief it filed on August 19, 2014 should be denied.

Background

On July 1, 2014, counsel for New GM proposed that New GM and WTC file *simultaneous* responses to Mr. Gillispie’s motion on August 19, 2014, and that Mr. Gillispie would file a reply on September 9, 2014. Ex. A. In response, Mr. Gillispie’s counsel sought an additional nine days to reply, and counsel for both New GM and WTC agreed. *Id.* New GM submitted the parties’ agreed-upon schedule (Ex. B), which the Court “so ordered” on July 7, 2014. Dkt. 12762.

On August 19, 2014, New GM and WTC filed their respective responses to Mr. Gillispie’s motion. *See* Dkt. 12863; 12864. Following these simultaneous filings, counsel for New GM did not speak to WTC about filing a “reply” to WTC’s submission. Instead, at 4:20 p.m. on Friday, September 5, 2014, New GM filed its Notice of Presentment and Proposed Order, and set an objection deadline of less than three business days later. *See* Dkt. 12884.

New GM’s Request To File Significant Additional Briefing Should Be Denied

New GM’s belated request for leave to file significant additional briefing should be denied. *First*, counsel for New GM made no attempt to meet and confer with counsel for Gillispie and WTC before filing its request. Nor did New GM file a motion, as required by

Bankruptcy Rule 9014.¹ Instead, in order to shorten the time for objections to its request, New GM improperly filed a Notice of Presentment. Moreover, New GM seeks authorization to file a 20-page “reply” to WTC’s submission, on top of the 24-page brief that it filed on August 19, 2014, without any corresponding opportunity for WTC to respond. New GM’s gamesmanship should not be rewarded.

Second, New GM has put the cart before the horse by *already filing* its actual 20-page “reply” as an attachment to its Notice of Presentment. *See* Dkt. 12884-2. As Judge Gonzalez has explained, “proposed reply papers should not be filed contemporaneously with the request for leave to submit them as doing so would enable the requesting party to accomplish its goal of placing the papers before the court, thereby reducing the question of whether the papers should be accepted for filing to relative unimportance.” *In re WorldCom, Inc.*, No. 02-13533 (AJG), 2007 WL 1989262, at *5 (Bankr. S.D.N.Y. July 9, 2007).

Third, the bulk of New GM’s 20-page “reply” rehashes arguments New GM made in the 24-page brief that it filed on August 19, 2014. *Compare* Dkt. 12884-2 *with* Dkt. 12863. Allowing New GM to file its new “reply” would allow them to make the same arguments twice—and in excess of the Court’s allowed page limits.

If The Court Grants New GM’s Belated Request To File Significant Additional Briefing, WTC Should Be Granted Equal Time To File A Response

Should the Court grant New GM’s request to file a 20-page “reply” to WTC’s August 19, 2014 submission, WTC requests an equal opportunity, with equal time, to respond to arguments made for the first time in that reply, including, *inter alia*, the erroneous contention that the GUC Trust is Old GM’s successor for all purposes and should be estopped from disputing any interpretation of the Sale Order that New GM may advance.

* * *

We are enclosing two proposed alternative counter-orders. The first denies New GM’s request, provides that New GM’s 20-page “reply” will be disregarded by the Court, and directs the Clerk of the Court to remove from the docket that unauthorized filing. The second provides WTC with 17 calendar days from the Court’s entry of an order to submit a response to New GM’s “reply.”

We thank the Court for its consideration.

Respectfully,

/s/ Lisa H. Rubin

Lisa H. Rubin

¹ Pursuant to Local Bankruptcy Rule 9074-1(b), the use of notice of presentment in lieu of a hearing is only appropriate where notice and a hearing are not required and a motion is not mandatory. Because the relief requested by New GM is not specifically governed by the Federal Rules of Bankruptcy Procedure or the Local Rules, New GM was required under Bankruptcy Rule 9014 to proceed by motion.

EXHIBIT A

From: Davidson, Scott <SDavidson@KSLAW.com>
Sent: Wednesday, July 02, 2014 7:10 AM
To: David Owens; Rubin, Lisa H.
Cc: Steinberg, Arthur; Michael Kanovitz
Subject: RE: GM/Gillispie

That works for us as well.

Scott I. Davidson | King & Spalding LLP

Tel: 212.556.2164 | Fax: 212.556.2222 | E-mail: sdavidson@kslaw.com
1185 Avenue of the Americas | New York, New York 10036

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From: David Owens [<mailto:david@loevy.com>]
Sent: Tuesday, July 01, 2014 9:10 PM
To: Rubin, Lisa H.
Cc: Davidson, Scott; Steinberg, Arthur; Michael Kanovitz
Subject: Re: GM/Gillispie

Yes, I meant September 18th.

Thanks,

On Tue, Jul 1, 2014 at 8:06 PM, Rubin, Lisa H. <LRubin@gibsondunn.com> wrote:

Thanks, David. Assuming that you meant September 18 for your reply, that is no problem on our end.

Regards,

Lisa

Lisa H. Rubin
Of Counsel

GIBSON DUNN

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From: David Owens [mailto:david@loevy.com]
Sent: Tuesday, July 01, 2014 9:04 PM
To: Davidson, Scott
Cc: Steinberg, Arthur; Rubin, Lisa H.; Michael Kanovitz
Subject: Re: GM/Gillispie

Scott,

Thanks for the message.

That schedule works for us, with one exception: we'd like 30 days to respond, pushing our Reply date to August 18th. I trust that won't be a problem.

Also, I've cc'd Mike Kanovitz from our office on this email, who will be attending the conference (via call in) on behalf of Mr. Gillispie.

Thanks,

On Tue, Jul 1, 2014 at 7:40 PM, Davidson, Scott <SDavidson@kslaw.com> wrote:

David:

Thank you for speaking with me yesterday regarding your motion concerning Roger Dean Gillispie. As we discussed, you believe that your motion should be briefed separate and apart from the Ignition Switch Litigation that is currently pending before the Bankruptcy Court. In that regard, with respect to a proposed briefing schedule, as we discussed, how does the following work with your schedule: (i) New GM and the GUC Trust will respond to your motion by August 19, 2014, (ii) you can reply by September 9, 2014, and (iii) the Bankruptcy Court will schedule a hearing thereafter. I spoke to counsel

for the GUC Trust - Lisa Rubin, from Gibson Dunn - who is fine with this schedule. Lisa is copied on this e-mail as well. Please let me know if the foregoing works for you. If so, we can let the Court know during tomorrow's conference.

Thank you

Scott

Scott I. Davidson | King & Spalding LLP

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David B. Owens

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--

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EXHIBIT B

From: Davidson, Scott <SDavidson@KSLAW.com>
Sent: Thursday, July 03, 2014 3:55 PM
To: gerber.chambers@nysb.uscourts.gov
Cc: david@loevy.com; Rubin, Lisa H.; Steinberg, Arthur
Subject: In re Motors Liquidation Company; Case No.: 09-50026 - Proposed Stipulation and Agreed Order for Gillispie Motion
Attachments: GM_Gillispie - Scheduling Order for Motion.DOCX

Dear Judge Gerber:

As discussed during the Conference yesterday, attached please find a proposed Stipulation and Agreed Order regarding the briefing schedule for the Roger Dean Gillispie motion (in Word format). Counsel for Mr. Gillispie and counsel for the GUC Trust, who are each copied on this e-mail, consent to the entry of the Order.

If you have any questions, please let me know.

Respectfully submitted,
Scott Davidson

Scott I. Davidson | King & Spalding LLP

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re: : Chapter 11
: :
MOTORS LIQUIDATION COMPANY, *et al.*, : Case No.: 09-50026 (REG)
f/k/a General Motors Corp., *et al.* :
: (Jointly Administered)
Debtors. :
-----X

**STIPULATION AND AGREED SCHEDULING ORDER REGARDING
THE MOTION FOR LEAVE TO PURSUE CLAIMS AGAINST GENERAL
MOTORS LLC, AND, ALTERNATIVELY, TO FILE A POST-BAR-DATE PROOF
OF CLAIM IN THE MOTORS LIQUIDATION COMPANY BANKRUPTCY**

General Motors LLC (“**New GM**”), the Motors Liquidation Company GUC Trust (“**GUC Trust**”), and Roger Dean Gillispie (“**Mr. Gillispie**,” and collectively with New GM and the GUC Trust, the “**Parties**”) respectfully submit this Stipulation and Agreed Scheduling Order regarding the briefing schedule for the *Motion For Leave To Pursue Claims Against General Motors LLC, And, Alternately, To File A Post-Bar-Date Proof Of Claim In The Motors Liquidation Company Bankruptcy*, filed by Mr. Gillispie on June 17, 2014 [Dkt. 12727] (“**Motion**”):

1. In connection with the Motion, the Parties have agreed on the following briefing schedule:

| Event | Agreed Date |
|--|---|
| New GM and the GUC Trust to file responses (“ <u>Responses</u> ”) to the Motion | August 19, 2014 |
| Mr. Gillispie to file a reply to the Responses | September 18, 2014 |
| Hearing on Motion | Scheduled by the Court after briefing has concluded |

2. This Stipulation is subject to approval by the Court. In the event the Court declines to approve this Stipulation, it shall be null and void, with no effect.

3. This Stipulation may be executed in counterparts, any of which may be transmitted by facsimile, and each of which shall be deemed an original.

4. The Parties each reserve the right to seek a continuance of any deadlines or dates set forth herein.

SO AGREED TO BY AND AMONG THE FOLLOWING:

/s/ Scott Davidson
Arthur Steinberg
Scott Davidson
KING & SPALDING LLP
1185 Avenue of the Americas
New York, NY 10036
212-556-2100

Attorneys for General Motors LLC

/s/ Lisa H. Rubin
Lisa H. Rubin
GINSON, DUNN & CUTCHER LLP
200 Park Avenue
New York, New York 10166-0193
212-351-4000

*Attorneys for the Motors Liquidation
Company GUC Trust*

DATED: July 3, 2014

DATED: July 3, 2014

/s/ David B. Owens
David B. Owens
LOEVY & LOEVY
312 N. May, Suite 100
Chicago, Illinois 60607
312-243-5900

Attorneys for Roger Dean Gillispie

DATED: July 3, 2014

IT IS SO ORDERED.

Dated: _____
New York, New York

United States Bankruptcy Judge